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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number	Filed
		10/661,107	September 12, 2003
		First Named Inventor	
		Harry BIMS	
		Art Unit	Examiner
		2617	Ajayi, Joel
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____</p> <p><input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>50,720</u></p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>one (1)</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Harry BIMS

Appl. No.: 10/661,107

Filed: September 12, 2003

For: **Single Frequency Wireless  
Communication System**

Confirmation No.: 6489

Art Unit: 2617

Examiner: Ajayi, Joel

Atty. Docket: 1875.7300003

**Arguments to Accompany the Pre-Appeal Brief Request for Review**

***Mail Stop AF***

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant hereby submits the following Arguments, in five (5) or less total pages, as attachment to the Pre-Appeal Brief Request for Review (Form PTO/SB/33). A Notice of Appeal is concurrently filed.

***Arguments***

Applicant's arguments in the Reply Under 37 C.F.R. § 1.111, filed on July 18, 2008 (herein "Reply") were not properly considered or responded to by the Examiner in the Final Office Action dated November 10, 2008 (herein the "Final Action"). The Examiner's response in the Final Action was legally and factually deficient because the Examiner failed to adequately demonstrate that U.S. Patent No. 5,838,226 to Houggy *et al.* (herein "Houggy"), and U.S. Patent No. 4,363,129 to Cohn *et al.* (herein "Cohn"), alone or in combination, teach or suggest all of the elements recited by the independent claims 1 and 33.

For a rejection to be legally adequate under 35 U.S.C. § 103, every claim feature must be taught, or be obvious to person of ordinary skill in the art, in the combination of the references. *See, Orthopedic Equipment, Inc. v. United States*, 702 F.2d 1005, 1013 (Fed. Cir. 1983). The rejection of independent claims 1 and 33 is legally inadequate because neither Houggy nor Cohn,

alone or in combination, teach or suggest determining whether transmission of the first and second packets will result in interference. This feature is recited in both independent claim 1 and independent claim 33. For example, claim 1 recites at least the feature of "*determining... whether wirelessly transmitting first and second packets... will create interference between the first and second packets*" and "*wirelessly transmitting the first and second packets... when it is determined that transmitting the first and second packets will create interference.*" See, Reply, p. 13.

The Final Action relies on Hougy to teach or suggest these aforementioned features of claim 1. See, Final Action, p. 3. However, the repeaters of Hougy repeat "the link claim signal and command packet in a defined time slot, to avoid interference," therefore the repeaters of Hougy have no need to "*determin[e] ... whether wirelessly transmitting first and second packets ... will create interference between the first and second packets*" as recited in independent claim 1. Reply, p. 12. Each repeater Hougy transmits "information in a ***defined repeater time slot and in a defined sequence predetermined*** to ensure that all devices receive the information intended for the device." Hougy, 4:35-39 (emphasis added). For example,

[f]or three repeaters, the sequence necessary to ensure that all devices within range of any repeater receive communications intended for it has 7 slots, e.g., R1-R2-R3-R1-R2-R3-1 (7 slots). In order to ensure that no device communicates more than once in a 100 millisecond interval, wait slots are added as follows: R1-R2-R3-W-R1-R2-R3-W-R1 (9 slots).

Hougy, 28:1-7

According to Hougy, "the number of slots required (R) as a function of the number of repeaters (N) is determined by the following relationship: for N less than or equal to 4... for N=5 then the equation is  $R(5)=R(4)+2=15$  slots... for N=6 then the equation is  $R(6)=R(5)+2=R(4)+4=17$  slots." Hougy, 28:23-31. The repeaters of Hougy thus repeat the information in "defined

repeater time slot and in a defined sequence predetermined" irrespective of whether there will be interference. *See*, Reply, p. 12.

Therefore, the repeaters of Houggy do not teach or suggest at least the features of *"determining within the plurality of repeaters whether wirelessly transmitting first and second packets...will create interference between the first and second packets"* and/or *"wirelessly transmitting the first and second packets... when it is determined that transmitting the first and second packets will create interference"* as recited by independent claim 1. Reply, pp. 12-13. From the discussion above, the repeaters of Houggy instead repeat the information in "defined repeater time slot and in a defined sequence predetermined" regardless of whether there will be interference. Houggy does not teach or suggest that the repeaters make a determination whether transmitting information to the devices will cause interference, rather the repeaters of Houggy transmit information to the devices so long as the repeaters are within their respective repeater time slots.

Cohn does not teach or suggest these missing features of independent claim 1. For example, "Cohn teaches the minimization of simulcast distortion "by applying double modulation to a signal that is broadcast to the same-frequency repeater.'" Reply, p. 13 (citing Cohn, Abstract). Cohn does not teach or suggest at least the features of *"determining within the plurality of repeaters whether wirelessly transmitting first and second packets...will create interference between the first and second packets"* and/or *"wirelessly transmitting the first and second packets... when it is determined that transmitting the first and second packets will create interference"* as recited by claim 1. Reply, p. 13. Cohn therefore does not cure the above noted deficiencies of Houggy.

Accordingly, the combination of Houggy and Cohn does not teach each and every feature of independent claims 1 and 33, and therefore does not meet the requirements of *prima facie* obviousness. Dependent claims 2 and 4-14 are likewise not rendered obvious by the combination of Houggy and Cohn for the same reasons as claim 1 from which they respectively depend and further in view of their own respective features. Accordingly, Applicant respectfully requests that the rejection of claims 1, 2, 4-14, and 33 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

The Examiner has rejected independent claims 15, 20, 29, 34, and 35 as being obvious under 35 U.S.C. § 103(a) over Houggy in view Cohn and in further view of U.S. Patent No. 5,384,776 to Guillford *et al.* (herein "Guillford"). Like independent claims 1 and 33, independent claims 15, 20, 29, 34 and 35 all recite the feature of determining or detecting whether immediate or overlapping transmission of the first and second packets will result in interference. *See*, Reply, p. 15.

Like Cohn, Guillford also does not cure the above noted deficiencies of Houggy. Specifically, Gulliford does not teach or suggest the feature of determining or detecting whether immediate or overlapping transmission of the first and second packets will result in interference, nor does the Final Action so allege. *See*, Final Action, pp. 3-4. For example, Guillford is directed "to audio routing within trunked radio frequency multi-site switches." Reply, p. 13. Guillford therefore does teach or suggest at least the feature of determining or detecting whether immediate or overlapping transmission of the first and second packets will result in interference.

Accordingly, the combination of Houggy, Cohn, and Gulliford does not teach each and every feature of the independent claims 15, 20, 29, 34, and 35, and therefore does not meet the requirements of *prima facie* obviousness. Dependent claims 16-19, 21, 23-28, 30, and 31 are

likewise not rendered obvious by the combination of Houggy, Cohn, and Gulliford for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features. *See*, Reply, p. 15. Accordingly, Applicant respectfully requests that the rejection of claims 15-17, 19-21, 23-31 and 34-35 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

### ***Conclusion***

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a), and that all the pending claims be passed to allowance.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

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